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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

AARON DALE EATON,

Plaintiff,

v.

Two Rivers Correctional Institution Grievance coordinator EYNON; Two Rivers Correctional Institution Grievance coordinator ROSSI; Two Rivers Correctional Institution Physical Plant Manager STARK; Two Rivers Correctional Institution Physical Plant Asst. Manager; DARCY; Two Rivers Correctional Institution Superintendent T. BLEWETT; Two Rivers Correctional Institution PROVIDER MANEY; in their individual or official capacities as applicable, Two Rivers Correctional Institution Provider CYNTHIA LECLOUX; Two Rivers Correctional Institution Officer WILLIS; Two Rivers Correctional Institution Officer LEMMON; Two Rivers Correctional Institution Lieutenant ROBINSON,

Defendants.

Case No. 2:20-cv-01251-SI

DEFENDANTS' REPLY TO MOTION FOR SUMMARY JUDGMENT

A. Doctor White's declaration does not create a genuine issue of material fact

In response to summary judgment, plaintiff presents a declaration from Dr. Michael White. Dkt # 174-2. Dr. White claims he has “experienced several complaints regarding mold exposure” without identifying whether he has received such complaints from plaintiff in the relevant timeframe, i.e., when plaintiff was reporting mold complaints. Such generalities are not enough to survive summary judgment. Dr. White does not offer an opinion—nor is he qualified to render an opinion—on the specific allegations of this case. In making his declaration, Dr. White “reviewed current and past literature regarding health effects of mold and fungus exposure[.]” Dkt # 174-2, p. 9-10. That’s it. He has not physically examined plaintiff. He has not read plaintiff’s medical records. He has not reviewed ODOC’s investigative findings about the alleged mold. He has not consulted plaintiff’s ODOC medical provider. He has not interviewed any ODOC staff. He has not inspected the showers where the alleged mold was found. He has not looked at any photos or documentation. He has not even interviewed plaintiff over the phone. Dr. White is not qualified to opine on any facts specific to this case.

Dr. White’s opinion that mold “can cause unnecessary health damage and suffering” is not in dispute. (Emphasis added). Dkt # 174-2, p. 11. We all agree that mold can be bad. Dr. White is certainly well-qualified to opine on the health risks of mold. But the health risks of mold are not in dispute. What is in dispute is whether plaintiff was exposed to mold. Defendants presented evidence that he was not. *See* Decl. Stark. Dr. White offers no opinion either way.

Dr. White’s opinion that medical personnel should “advocate for their patients” is not in dispute. What is in dispute is whether plaintiff received medical appropriate care. Dr. White offers no opinion on the adequacy of plaintiff’s medical care (nor could be, based on his failure to review a scintilla of records). The silence of Dr. White’s declaration on the adequacy of plaintiff’s medical care leaves defendants’ evidence uncontradicted. Registered Nurse Faulstich and Doctor Roberts, M.D. each found that plaintiff received medically appropriate care. *See* Second Decl. Grievance Coordinator, Att. 9, pp. 3-9.

In short, Dr. White's declaration does not create a genuine issue of material fact. Plaintiff fails to meet his burden in showing that ODOC's chosen course of treatment was "medically unacceptable". *Toguchi v. Chung*, 391 F.3d 1051, 1058 (9th Cir. 2004). State defendants otherwise rest on their pleadings.

B. This Court should dismiss this case under § 1915(e).

Under 28 U.S.C. § 1915(e), this Court shall dismiss the case at any time if the court determines that—

- (A) the allegation of poverty is untrue; or
- (B) the action or appeal—
 - (i) is frivolous or malicious;
 - (ii) fails to state a claim on which relief may be granted; or
 - (iii) seeks monetary relief against a defendant who is immune from such relief.

Now that the Court has received summary judgment briefing and evidence from the parties, this Court should grant summary judgment, declare the action to be frivolous, and dismiss the case accordingly.

DATED March 23, 2022.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on March 23, 2022, I served the foregoing DEFENDANTS' REPLY TO MOTION FOR SUMMARY JUDGMENT upon the parties hereto by the method indicated below, and addressed to the following:

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